

DCP:MJB:dlm

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK,	:	NO. 1:CV-06-2348
Plaintiff	:	
	:	(Conner, J.)
v.	:	
	:	
JOSEPH V. SMITH, et al.,	:	
Defendants	:	Filed Electronically

**DEFENDANT JOHN OLIVER'S STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant John Oliver respectfully submits this statement of material facts in support of motion for summary judgment, and states as follows:

1. Womack filed his original complaint on December 7, 2006. See Doc. No. 1.
2. Womack did not include John Doe defendants in his original complaint. See id.
3. On May 4, 2007, Womack served Initial Disclosures Statement, which identified John Oliver, Captain at USP Lewisburg. See Initial Disclosures (Ex. A) at 5.

4. The Initial Disclosures contain references to numerous non-defendant USP Lewisburg employees. See id.
5. Womack has no evidence that Defendant Oliver had notice of this matter within the 120-day time period.
6. There was no reason for Defendant Oliver to think he was mistakenly not included as a party. See id.
7. Womack made a tactical decision to not name Oliver as a defendant in the original complaint. See id.

Accordingly, this Court should grant summary judgment to Defendant John Oliver because Womack failed to comply with the applicable two-year statute of limitations.

Respectfully submitted,

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United States Attorney

/s/ Michael J. Butler

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Dated: August 27, 2009

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK,	:	NO. 1:CV-06-2348
Plaintiff	:	
	:	(Conner, J.)
v.	:	
	:	
HARLEY LAPPIN, et al.,	:	
Defendants	:	Filed Electronically

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on August 27, 2009, she served a copy of the attached

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by filing with the Court's ECF system.

Addressee:

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